

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Daniel Giansante	Team: Team # 5	CCRB Case #: 201400804	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Sunday, 01/26/2014 10:00 PM	Location of Incident: [REDACTED]	Precinct: 43	18 Mo. SOL 7/26/2015	EO SOL 7/26/2015	
Date/Time CV Reported Mon, 01/27/2014 2:02 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 01/27/2014 2:02 PM		

Complainant/Victim	Type	Home Address
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

Witness(es)	Home Address
[REDACTED]	[REDACTED]

Subject Officer(s)	Shield	TaxID	Command
1. An officer			
2. DTS William Hart	03968	922483	ESS 03
3. DTS Roger Savage	06638	902367	ESS 03
4. DI Vanessa Kight	00000	875471	PSA 8

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Christopher Cruz	00954	938296	PSA 8
2. POM Matthew Hartnett	09810	936739	ESS 03
3. POM Ruben Leon	05132	930556	ESS 03
4. POM Oscar Apolinario	26271	932265	PSA 6
5. SGT Victoria Silcott	05345	945004	PSA 3
6. SGT Frantz Demorin	03843	922234	PSA 8

Officer(s)	Allegation	Investigator Recommendation
A. DI Vanessa Kight	Abuse: DI Vanessa Kight entered and searched § 87(2)(b) [REDACTED] in the Bronx.	[REDACTED]
B. An officer	Discourtesy: An officer spoke rudely to § 87(2)(b) [REDACTED]	[REDACTED]
C. DI Vanessa Kight	Discourtesy: DI Vanessa Kight spoke rudely to § 87(2)(b) [REDACTED]	[REDACTED]
D. An officer	Abuse: An officer threatened to arrest § 87(2)(b) [REDACTED]	[REDACTED]
§ 87(4-b), § 87(2)(g) [REDACTED]	§ 87(4-b), § 87(2)(g) [REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

### Case Summary

On January 27, 2014, § 87(2)(b) filed the following complaint by telephone with the CCRB.

On January 26, 2014, at approximately 9:30 p.m., officers from Police Service Area 8 and the Emergency Services Unit responded to § 87(2)(b) in the Bronx. The following allegations resulted:

- **Allegation A—Abuse of Authority: DI Vanessa Kight entered and searched § 87(2)(b) in the Bronx.**

§ 87(2)(g), § 87(2)(b)

- **Allegation B—Discourtesy: An officer spoke rudely to § 87(2)(b)**

§ 87(2)(g), § 87(2)(b)

- **Allegation C—Discourtesy: DI Vanessa Kight spoke rudely to § 87(2)(b)**

§ 87(2)(g), § 87(2)(b)

- **Allegation D—Abuse of Authority: An officer threatened to arrest § 87(2)(b)**

§ 87(2)(g)

- § 87(4-b), § 87(2)(g), § 87(4-b), § 87(2)(g)

§ 87(4-b), § 87(2)(g), § 87(4-b), § 87(2)(g)

§ 87(4-b), § 87(2)(g)

The case was ineligible for mediation.

### Results of Investigation

#### Civilian Statements:

**Complainant:** § 87(2)(b)

- § 87(2)§ 87(2)(b)

#### CCRB Statement

§ 87(2)(b) provided a brief phone statement when filing his complaint (encl. 3b). He provided additional information to Inv. Fenkel on February 18, 2014 (encl. 4a), and to Inv. Giansante on February 28, 2014 (encl. 4b).

§ 87(2)(b) was not present during the incident. He lives at § 87(2)(b) with his father, § 87(2)(b) and his daughter. He arrived home on January 27, 2014, to find that the lock to his bedroom door was damaged, and that mattresses in his and his daughter's bedrooms had been moved. A laundry bag was removed from his closet and partially emptied, and it appeared that his daughter's closet had also been entered. § 87(2)(b) and § 87(2)(b) were in the apartment. The investigation identified § 87(2)(b) as § 87(2)(b). § 87(2)(b) said that he had been arrested and released that morning. He explained that § 87(2)(b) had an incident in another apartment and had been cut, that he came to § 87(2)(b) apartment to clean his wound, and that officers and a SWAT team arrived. § 87(2)(b) voluntarily exited the apartment and officers entered.

**Victim:** § 87(2)(b) § 87(2)(b)

- § 87(2)(b) § 87(2)(b)

**CCRB Statement**

§ 87(2)(b) § 87(2)(b) provided a phone statement on February 19, 2014 (encl. 5a). He was interviewed at the CCRB on February 24, 2014 (encl. 5c-5d). His statements were consistent.

At approximately 10:00 p.m., § 87(2)(b) § 87(2)(b) was asleep in his bedroom. § 87(2)(b) § 87(2)(b) was staying in the apartment along with § 87(2)(b) § 87(2)(b). § 87(2)(b) § 87(2)(b) initially stated that these were the only people in the apartment at the time. He later stated that § 87(2)(b) § 87(2)(b)'s girlfriend was also there. He believed that she was present during the incident, but did not recall seeing her brought out into the hallway by officers and did not see her until the following morning. § 87(2)(b) § 87(2)(b) did not know her name. § 87(2)(b) § 87(2)(b) also later stated that a man named § 87(2)(b) § 87(2)(b) may have been present. § 87(2)(b) § 87(2)(b) is § 87(2)(b) § 87(2)(b)'s friend, and was not staying in the apartment that night, but was in the building. § 87(2)(b) § 87(2)(b) could not be sure if § 87(2)(b) § 87(2)(b) was present when police arrived, but he guessed that § 87(2)(b) § 87(2)(b) was with § 87(2)(b) § 87(2)(b).

§ 87(2)(b) § 87(2)(b) was awoken in his bedroom by an officer he described as a Hispanic man in his late 20s or early 30s who was 6'0" tall, 200 pounds, with black hair. The investigation did not identify this first officer. The officer told him to get out of bed, turn around, and put his hands behind his back. § 87(2)(b) § 87(2)(b) complied and was handcuffed. The officer led him through the apartment and out into the hallway. While being led out of the apartment, § 87(2)(b) § 87(2)(b) saw an officer walking in the opposite direction toward the bedrooms. § 87(2)(b) § 87(2)(b) could not recall which officer he saw.

Once in the hallway, § 87(2)(b) § 87(2)(b) saw a black female officer in a white uniform shirt standing at the door of the apartment. The investigation identified her as DI Vanessa Kight. She seemed to be in charge and was giving orders. He saw § 87(2)(b) § 87(2)(b) lying on the floor. § 87(2)(b) § 87(2)(b) was handcuffed and bleeding from his right hand. Two officers were standing near § 87(2)(b) § 87(2)(b). § 87(2)(b) § 87(2)(b) described the first as a Hispanic man who was 5'8"-5'9" tall and stocky, and he described the second as a white man who was 5'8" tall, stocky, and dressed in plainclothes. The investigation did not identify these officers. § 87(2)(b) § 87(2)(b) was also handcuffed. § 87(2)(b) § 87(2)(b) was very angry and yelled and used profanity. He asked the officers what the hell was going on and why they were going in his apartment. The officer who led § 87(2)(b) § 87(2)(b) out of the apartment told him, "Shut up or I'm taking you down to the precinct." § 87(2)(b) § 87(2)(b) protested that this is America and he has a right to speak. The officer said, "Shut up or we're gonna arrest you." § 87(2)(b) § 87(2)(b) protested that the officers did not have a warrant, and DI Kight said, "We don't need no fucking warrant." The officer grabbed the linkage of § 87(2)(b) § 87(2)(b)'s handcuffs and twisted, causing pain in § 87(2)(b) § 87(2)(b)'s wrists. He told the officer to let go because it hurt. The officer held the linkage for a few seconds and then let go, and § 87(2)(b) § 87(2)(b) calmed down.

At some point while § 87(2)(b) § 87(2)(b) was standing in the hallway, three white male officers arrived from the stairwell. The investigation identified them as PO Matthew Hartnett, Det. Robert Savage, and Det. William Hart of ESU. They had helmets, vests, and machineguns. They did not carry shields. § 87(2)(b) § 87(2)(b) was never struck with a shield and did not see anyone else struck with a shield. He did not see officers use force against anyone during the incident. The ESU officers remained for a few minutes and spoke to DI Kight before leaving. They did not enter the apartment. At some point § 87(2)(b) § 87(2)(b) saw an officer speak to DI Kight and then walk into the apartment. He could not recall which officer this was or provide a description.

The officers ran warrant checks and found that § 87(2)(b) § 87(2)(b) had an outstanding warrant. He and § 87(2)(b) § 87(2)(b) were arrested, while § 87(2)(b) § 87(2)(b) was released. He entered the apartment and

went straight to his bedroom and went to sleep. He did not see anything changed in the apartment when he walked to his bedroom. At no point during the incident did he hear any officer use profanity or threaten to arrest anyone other than himself.

The next morning when § 87(2)(b) § 87(2)(b) awoke, he met § 87(2)(b) who told him that the door to his bedroom had been broken open and that his room was a mess. § 87(2)(b) had already cleaned up, so § 87(2)(b) § 87(2)(b) did not personally see the mess, but he did see that the lock on § 87(2)(b) door was broken. § 87(2)(b) § 87(2)(b) never saw any officer enter § 87(2)(b) room or break the door. Later that day § 87(2)(b) and § 87(2)(b) returned from jail. § 87(2)(b) explained that on the evening of the incident, he went up to the § 87(2)(b) of § 87(2)(b) § 87(2)(b)'s building, where his child and his child's mother live. The investigation identified her as § 87(2)(b). He got into an argument with § 87(2)(b) § 87(2)(b) which turned physical, and she cut his right hand. § 87(2)(b) returned to § 87(2)(b) § 87(2)(b)'s apartment. He heard the police knocking and went outside in the hallway to meet them. He left the apartment door unlocked, and officers entered after arresting him in the hallway.

**Victim:** § 87(2)(b)

- § 87(2)(b) § 87(2)(b)

**CCRB Statement**

§ 87(2)(b) provided a phone statement on March 25, 2014 (encl. 6a-6b). Any additions to or inconsistencies between his statement and § 87(2)(b) § 87(2)(b)'s are noted below.

§ 87(2)(b) was inside apartment § 87(2)(b) with § 87(2)(b) and § 87(2)(b), who goes by the name § 87(2)(b), the mother of one of § 87(2)(b)'s children, was there, along with § 87(2)(b), the mother of § 87(2)(b)'s child. § 87(2)(b)'s daughter and two of § 87(2)(b)'s children were also there. § 87(2)(b).

At approximately 7:30 p.m. or 8 p.m., § 87(2)(b) went to apartment § 87(2)(b) to see § 87(2)(b). § 87(2)(b) and § 87(2)(b) accompanied him, while § 87(2)(b) and § 87(2)(b) remained on the 4<sup>th</sup> floor. § 87(2)(b) cut his left hand with a knife and he returned to apartment § 87(2)(b). At approximately 9:30 p.m. or 10 p.m., § 87(2)(b) began getting phone calls from people in the area telling him that police were coming to his door. He heard knocking and looked out the windows, where he saw officers with battering rams moving through the housing complex toward his building. He thought the officers were planning to break down the door so he decided to give himself up. § 87(2)(b) and § 87(2)(b) stood behind him as he opened the door to the apartment.

§ 87(2)(b) opened the door and saw an officer pointing his gun at him. § 87(2)(b) described the officer as a white man in his early 30s who was 5'8"-5'9" tall, 180-200 pounds, with black hair. The investigation did not identify the officer. The officer yelled, "Get fucking down! Shut the fuck up!" There were 3-4 officers standing to the left of the doorway, including DI Kight and two white male officers. A heavyset white male officer in his late 30s who was 6'2" tall and had a machinegun and tactical uniform was standing to the right of the door, around a corner. The investigation did not identify these three white male officers. § 87(2)(b) got down on the ground. At no point did he physically resist the officers. Some or all of the officers who were standing to the left of the door entered the apartment and pulled § 87(2)(b) and § 87(2)(b) into the hallway. Officers arrived from the elevators with machineguns and tactical shields and used the shields to push § 87(2)(b) into a corner of the hallway.

Officers entered the apartment after § 87(2)(b) and § 87(2)(b) were pulled out, but § 87(2)(b) could not say which officers did so. § 87(2)(b) § 87(2)(b) was brought into the hallway and yelled at the officers. § 87(2)(b) became emotional and screamed at the officers. He told them to leave § 87(2)(b) § 87(2)(b) alone because he was elderly. § 87(2)(b) was on his knees and facing a wall so

he could not see § 87(2)(b). He heard officers tell § 87(2)(b) to “shut the fuck up.” He also heard an officer say that they would take § 87(2)(b) in if he did not shut the fuck up. § 87(2)(b) asked the officers what was going to happen and the officer who pointed a gun at him, the officer in the tactical uniform, and DI Kight all said that they were going to arrest everyone. The officer who pointed a gun at him also said that ACS was going to get involved.

### **Attempts to Contact Civilians**

§ 87(2)(b) and § 87(2)(b) reported § 87(2)(b)'s first name as § 87(2)(b). § 87(2)(b) stated that he lived at § 87(2)(b). However, the investigation later discovered that § 87(2)(b)'s arrest entry on the Command Log shows his first name as § 87(2)(b). A subsequent search of NYPD arrest records showed prior arrests for a § 87(2)(b) with the address § 87(2)(b). Letters were sent to § 87(2)(b) on February 18, 2014, and March 5, 2014, neither of which was returned. Inv. Fenkel found a phone number for him through a Whitepages search and left a message with his mother. Inv. Giansante left messages at that number twice more. § 87(2)(b)'s mother answered a fourth call, said that she had relayed the previous messages to § 87(2)(b) and that § 87(2)(b) stated the incident did not involve him. She refused to provide his cellphone number. A fifth call was made and returned a busy signal.

§ 87(2)(b) could not provide contact information for § 87(2)(b) or § 87(2)(b). LexisNexis searches provided no contact information for § 87(2)(b) and one phone number for a § 87(2)(b). Two messages were left at that number with no response.

§ 87(2)(b) could not provide a full name for § 87(2)(b).

### **NYPD Statements:**

#### **Subject Officer: DI VANESSA KIGHT**

- *DI Kight, a black woman, 5'8" tall, 210 pounds, with black hair and brown eyes, was § 87(2)(b) at the time of the incident.*
- *On January 26, 2014, DI Kight was the commanding officer of PSA8. She was dressed in uniform and worked from 6 p.m. on January 26, 2014, to 2 a.m. on January 27, 2014.*

#### **CCRB Statement**

DI Kight was interviewed at the CCRB on September 26, 2014 (encl. 7b-7d).

On the night of January 26, 2014, DI Kight was inside the PSA8 stationhouse when she received a radio communication or phone call. She believed the call came from Sgt. Demorin but could not be sure. She was informed that there was an AIDED case inside § 87(2)(b) in the Bronx, but that officers could not find the injured person and that there was a blood trail leading to an apartment. The occupants of the apartment would not open the door and ESU had already been requested. It took at least 20 minutes for her to arrive at the location. Sgt. Demorin took her to the 13<sup>th</sup> floor. He explained that the incident began there, at the apartment of a woman, § 87(2)(b), who had a dispute with her boyfriend, § 87(2)(b). § 87(2)(b) told Sgt. Demorin that § 87(2)(b) had hit her, and that she had stabbed or slashed him with a knife. DI Kight saw § 87(2)(b) on the 13<sup>th</sup> floor. She could not recall which other officers were on the 13<sup>th</sup> floor at this time. § 87(2)(b) did not say where on § 87(2)(b)'s body she had stabbed or slashed him. There was a blood trail leading from § 87(2)(b)'s apartment to the elevator. A VIPER officer in the building said that a man had exited the elevator on the 4<sup>th</sup> floor and made a right, and the blood trail ended at the first apartment to the right of the elevator on the 4<sup>th</sup> floor.

The ESU officers were already in front of the apartment door, along with PSA8 officers. DI Kight recalled that the ESU officers had a pickaxe but did not recall seeing a tactical shield. She could not recall how many ESU officers were present. She knew that Sgt. Demorin was present

but could not recall which other PSA8 officers were there. She could not recall if Sgt. Wheeler, PO Cruz, PO Apolinario, PO Laietta, or PO Barbato were present. She knew that PO Ramirez and PO Kilroy were the initiative officers but could not recall if they were at the door at this time. She did not recall Sgt. Markert being there.

DI Kight did not learn how long ESU officers had been present before she arrived on the 4<sup>th</sup> floor. She knew that officers there had already been knocking. The ESU officers and other officers continued to knock while she was there. The officers received no response and DI Kight did not hear any sound coming from the other side of the door. At this point, DI Kight believed she was searching for someone who was both an injured person and a perpetrator. She said, “We knew there was somebody bleeding inside the apartment.” DI Kight estimated that the apartment occupants had refused to open the door for approximately one hour. ESU officers asked if they had to breach the door. DI Kight told them to breach because “we got an AIDED, there’s blood all over the place, we gotta find out where the person is.”

The ESU officers were discussing tactics regarding breaching the door when it was opened from within by § 87(2)(b). Officers pointed their guns at § 87(2)(b) and told him to get down. DI Kight could not recall which officers did so. She did not draw her weapon. No officer said, “Get fucking down,” or “Shut the fuck up.” PSA8 officers brought § 87(2)(b) to the ground. DI Kight could not recall which officers did so. § 87(2)(b) physically resisted and struggled with officers on the ground. DI Kight assisted in handcuffing him. ESU officers entered the apartment. DI Kight could not recall how many entered. PSA8 officers did not enter with the ESU officers. DI Kight did not know what the ESU officers did inside the apartment but said, “I would imagine they did a search.” She could not see what they were doing inside. They brought out § 87(2)(b) and § 87(2)(b). They were not pulled out and brought to the ground like § 87(2)(b). They stood handcuffed in the hallway. § 87(2)(b) was agitated and both he and § 87(2)(b) were “hollering and screaming.” She did not see any ESU officer strike a civilian with a tactical shield. § 87(2)(b) was moving around a little bit but not physically resisting. Officers did not have to restrain him and DI Kight did not see any officer grab and twist the linkage of his handcuffs. § 87(2)(b) was asking why the officers had entered his apartment. DI Kight “explained to him that if there’s someone bleeding in there we can’t just go home.” She also said, “We explained to him that he needed to be still and be quiet. We need to figure out what’s going on. If everything seems ok, we’ll let you go, but right now we need to figure out what’s going on.” DI Kight did not say, “Shut the fuck up,” “Shut up or we’re gonna arrest you,” or “Shut up or I’m taking you down to the precinct.” She did not hear any officer make any of those statements. She did not hear any officer use profanity with § 87(2)(b). She did not threaten to arrest him and did not hear any officer do so. She did not say, “We don’t need no fucking warrant.” She never threatened to notify ACS and did not hear any officer do so.

DI Kight entered the apartment. She could not recall which officers entered with her. She first walked down a hallway before seeing a room on her right and then a living room. There were two women in the apartment and a number of children. She instructed officers not to remove the women and children. She did not recall going into any other rooms, observing any property damage, or seeing any broken locks on doors. She did not perform any search; she merely stood in those two rooms. She was in the apartment for approximately ten minutes. She viewed § 87(2)(b) photographs from inside the apartment. She could not recall if she entered the rooms pictured but knew that in one room she entered a woman was sitting on a bed with children. She did not recall seeing mattresses moved around.

She exited the apartment. She could not recall if ESU officers were still present. § 87(2)(b) and § 87(2)(b) were kept in the hallway for approximately 20 minutes. Officers also ran warrant checks on § 87(2)(b) and § 87(2)(b). When asked why she and other PSA8 officers entered after ESU exited, DI Kight said, “ESU is not there to make arrests, they’re

not there to handle the crime. They're there to back up the entry." After they perform a cursory search, PSA8 officers take over. She entered the apartment to conduct the investigation, and said that it was not necessary to obtain a warrant before doing so because, "We had to get the AIDED out of there or find out if the AIDED was in there." She also said, "We had to go in because there was a bleeding man and we couldn't just leave him. There was blood all over the place." She was asked why it was necessary to enter the apartment once § 87(2)(b) and all the other males were brought out. She said, "The guy came out first, and ESU goes in. Then we need to go in to see what's going on. Number one, is he being held? Is he holding someone? Is he holding family hostage? What happened that you wouldn't open the door for an hour?" She did not perform a search for evidence in the apartment and did not direct officers to do so. She was asked if she would have been justified in performing a search and she said, "Sure. You had an injured male, and then you had people who wouldn't open the door for an hour. We had kids in there. We were knocking, knocking, knocking, so they had to hear us. To see what was going on. Why wouldn't you open up the door for the police who's standing outside the door?" She also said that she or ESU would have had the authority to break down a door inside the apartment to reach an individual inside a locked room.

**Witness Officer: SGT. FRANTZ DEMORIN**

- *Sgt. Demorin, a black man, 5'9" tall, 185 pounds, with brown hair and brown eyes, was § 87(2)(b) at the time of the incident.*
- *On January 26, 2014, Sgt. Demorin was the patrol supervisor in PSA8. He worked from 3 p.m. on January 26, 2014, to 2:47 a.m. on January 27, 2014. His operator was PO Laietta. He was dressed in uniform and worked in a marked RMP with vehicle number § 87(2)(b)*

**Memo Book**

On January 26, 2014, at approximately 9:30 p.m., Sgt. Demorin responded to a report of an assault in progress at § 87(2)(b) in the Bronx. He arrived at 9:34 p.m. He met with a female complainant who admitted to stabbing her kid's father. The victim was gone on arrival and resides in apt. § 87(2)(b). A vertical patrol was conducted. Capt. Kight was notified and on scene. ESU was ordered to breach the door of apt. § 87(2)(b). The perpetrator/victim exited voluntarily and was arrested for assaulting his common-law wife. At 11:35 p.m., Sgt. Demorin marked the two cross-complainants under arrest (encl. 8b-8c).

**CCRB Statement**

Sgt. Demorin was interviewed at the CCRB on August 20, 2014 (encl. 8e-8f). His statement was generally consistent with DI Kight's. Any additions or inconsistencies are noted below.

Sgt. Demorin responded to the § 87(2)(b) at approximately 9:30 p.m. He spoke to § 87(2)(b), who told him that she stabbed § 87(2)(b) in the neck and that § 87(2)(b) lived in apartment § 87(2)(b). Sgt. Demorin reached apartment § 87(2)(b) in a matter of minutes. He knocked heavily multiple times on the door of apartment § 87(2)(b) and announced himself. He could hear individuals walking around and talking inside, and he could hear that a television was on, but he received no response to his knocks. There were at least ten officers present at this time, including PO Ramirez, PO Kilroy, PO Cruz, and PO Apolinario.

It took DI Kight approximately 30 minutes to respond to the 4<sup>th</sup> floor. Sgt. Demorin left her on the 4<sup>th</sup> floor and returned to the 13<sup>th</sup> floor. He went back and forth between the two apartments approximately 2-3 times, to ensure that officers were in position and that the crime scene was not being compromised.

Sgt. Demorin returned to the 4<sup>th</sup> floor to find that ESU had already arrived and that § 87(2)(b) was already out of the apartment. He did not receive any radio transmissions alerting him

to this and had only happened to arrive on the 4<sup>th</sup> floor at that time. He recalled that at least two ESU officers were present. He walked into the apartment with another officer, whose identity he could not recall. There were no other officers already inside when he entered. He saw that there were approximately 2-3 women inside the apartment who were not handcuffed. He did not observe any property damage inside the apartment, and did not enter any bedrooms or move any objects. He remained in the apartment for no more than a minute.

**Witness Officer: PO CHRISTOPHER CRUZ**

- *PO Cruz, a white man, 6'0" tall, 175 pounds, with black hair and brown eyes, was § 87(2)(b) at the time of the incident.*
- *On January 26, 2014, PO Cruz was assigned to Sector B in PSA8. He was partnered with PO Apolinario, and his scheduled tour was from 3 p.m. to 11:35 p.m. He worked overtime afterward and continued straight through until a day shift the following morning. He was dressed in uniform and assigned to a marked RMP with number § 87(2)(b)*

**Memo Book**

On January 26, 2014, at 9:41 p.m., PO Cruz responded to § 87(2)(b) § 87(2)(b), to back up Sector A on an assault in progress. PO Cruz arrived at 9:45 p.m. At 9:49 p.m. he performed a vertical patrol. At 11:32 p.m. PO Cruz marked one man and one woman arrested and noted that Sgt. Demorin was on scene. At 11:40 p.m. PO Cruz left the location. At 11:45 p.m. he arrived at PSA8 EAST and went out of service for administrative work (encl. 9b-9c).

**CCRB Statement**

PO Cruz was interviewed at the CCRB on May 22, 2014 (encl. 9q-9r). His statement was generally consistent with DI Kight's. Any additions or inconsistencies are noted below.

At approximately 9:45 p.m., PO Cruz and PO Apolinario received a radio transmission directing them to support Sector A at the location. They were directed on scene to conduct a vertical patrol to look for blood. They began at the roof and walked down to the lobby, where they waited. After less than five minutes, PO Cruz could hear officers yelling, "Get down! Get down!" He and PO Apolinario ran upstairs to the 4<sup>th</sup> floor. Upon reaching the 4<sup>th</sup> floor, PO Cruz saw an officer attempting to handcuff § 87(2)(b) on the floor. ESU officers were escorting § 87(2)(b) § 87(2)(b) and § 87(2)(b) out of the apartment. PO Cruz walked into the apartment because there were other officers inside and he wanted to assist them. Upon entering the apartment, PO Cruz realized that officers were still escorting people out so he turned around and exited. He never went back inside the apartment. He did not enter any rooms in the apartment and did not observe any officers doing so. He also did not see any property damage. He could not recall which officers were inside or how many there were, but knew that there was at least one ESU officer inside.

**Witness Officer: PO OSCAR APOLINARIO**

- *PO Apolinario, a Hispanic man, 5'7" tall, 190 pounds, with black hair and brown eyes, was § 87(2)(b) at the time of the incident.*
- *On January 26, 2014, PO Apolinario was assigned to Sector B and was partnered with PO Cruz. He worked from 3 p.m. to 11:35 p.m., and worked overtime until 1:35 a.m. on January 27, 2014. He was dressed in uniform and assigned to marked RMP § 87(2)(b)*

**Memo Book**

On January 26, 2014, at 8:48 p.m., PO Apolinario took meal at PSA8 EAST. At 9:41 p.m., he was instructed to respond to § 87(2)(b) § 87(2)(b). He arrived there at 9:45 p.m. At 9:49 p.m. he



performed a vertical patrol. At 11:39 p.m. he escorted EMS to § 87(2)(b) (encl. 10d).

#### **CCRB Statement**

PO Apolinario was interviewed at the CCRB on June 25, 2014 (encl. 10g-10i). His statement was generally consistent with DI Kight's. Any additions or inconsistencies are noted below.

After he and PO Cruz waited in the lobby for some time, someone instructed them to wait in the staircase on the 3<sup>rd</sup> floor. After some time he heard a commotion on the fourth floor and he heard someone say, "Come out with your hands up." He and PO Cruz proceeded up to the fourth floor and saw Sgt. Markert, his operator PO Barbado, Sgt. Wheeler, and Sgt. Wheeler's operator. There were also two ESU officers, who had tactical shields.

PO Apolinario first stated that immediately upon reaching the fourth floor, he saw § 87(2)(b) and a short, young, dark-skinned woman out of the apartment in handcuffs. All officers were also out of the apartment when he arrived, and he never saw any officer reenter the apartment. After additional questioning, PO Apolinario presented a completely different account of the events on the fourth floor. Upon arriving on the fourth floor, PO Apolinario saw Sgt. Markert and PO Barbado with their guns drawn. The ESU officers also had their guns drawn. The apartment door was open and § 87(2)(b) was standing in the doorway. Sgt. Markert and PO Barbado were yelling, "Come out with your hands up!" Sgt. Markert and PO Barbado had their guns pointed at § 87(2)(b). ESU officers entered and pulled § 87(2)(b) out of the apartment. The two ESU officers, Sgt. Markert, and PO Barbado entered the apartment to remove the remaining civilians. They were inside for approximately five minutes before escorting the civilians out. PO Apolinario did not see any other officers enter the apartment.

#### **Witness Officer: PO MATTHEW HARTNETT**

- *PO Hartnett, a white man, 5'8" tall, 180 pounds, with brown hair and brown eyes, was § 87(2)(b) at the time of the incident.*
- *On January 24, 2014, PO Hartnett was assigned to ESU3 and partnered with PO Leon. He was dressed in uniform and worked from 3:15 p.m. on January 26, 2014, to 12:50 a.m. on January 27, 2014. He worked in a marked vehicle.*

#### **Memo Book**

On January 26, 2014, at 10:36 p.m., PO Hartnett received a radio run for a barricaded perpetrator at § 87(2)(b). He eventually marked the disposition as § 87(2)(b) but there is no separate time stamp (encl. 11b).

#### **ESU Report**

PO Hartnett prepared the ESU report, which states that a four-member crew arrived for a barricaded perpetrator, and that they had heavy weapons, vests and helmets, and a tactical shield. The disposition states: "§ 87(2)(b) Person in custody, injury involved, forced entry into premise, E.S.S. participated." However, the details section states: "Crew requested for a barricaded perp. Perp voluntarily came out of his apartment. Crew rendered aide for laceration to left hand" (encl. 11d-11f).

#### **CCRB Statement**

PO Hartnett was interviewed at the CCRB on July 21, 2014 (encl. 11h-11i).

At approximately 10:36 p.m., PO Hartnett and PO Leon received a radio run for a barricaded perpetrator at § 87(2)(b) in the Bronx. PO Hartnett and PO Leon went to the § 87(2)(b). There were a few officers present, but PO Hartnett could not estimate how many. There was also blood on the floor. PO Hartnett spoke to a captain there but could not recall what details she

relayed about the situation. There were no civilians present. PO Hartnett did not recall making an attempt to contact the perpetrator but thought it was possible that they knocked on the door.

PO Hartnett and PO Leon left the building and returned to their vehicle. Det. Hart and Det. Savage arrived and they and PO Hartnett returned to the § 87(2)(b) with their equipment. PO Leon remained outside. They were outside for approximately 5-10 minutes. When the officers arrived on the § 87(2)(b), § 87(2)(b) was already out of the apartment and in handcuffs. PO Hartnett assumed that the other officers had talked § 87(2)(b) out because the ESU did not have to make entry and he did not recall observing any evidence of a forcible entry. § 87(2)(b) § 87(2)(b) was also outside the apartment and not handcuffed. PO Hartnett did not recall seeing any other civilians.

None of the ESU officers ever entered the apartment. PO Hartnett never saw any officers enter or exit the apartment. PO Hartnett did not recall ever looking into the apartment and never caused any damage inside. None of the officers on scene ever explained to PO Hartnett how § 87(2)(b) had come out of the apartment. The ESU officers were on the § 87(2)(b) for less than an hour, and they all left together. The other officers and civilians were still present when ESU left.

PO Hartnett was the only ESU officer with a tactical shield. He did not strike any civilians with the shield. He confirmed that he prepared the ESU report for the incident, the narrative section of which states, “§ 87(2)(b) Person in custody, injury involved, forced entry into premise, E.S.S. participated.” PO Hartnett explained that the form is filled out in a computer program which has a drop-down menu for dispositions. 6C is the blanket disposition for an incident in which a barricaded perpetrator is taken into custody, and the preceding narrative is automatically entered.

**Witness Officer: PO RUBEN LEON**

- *PO Leon, a Hispanic man, 5’10” tall, 215 pounds, with black hair and brown eyes, was § 87(2)(b) at the time of the incident.*
- *On January 26, 2014, PO Leon was assigned to ESU3 and partnered with PO Hartnett. He worked from 3:15 p.m. on January 26, 2014, to 12:50 a.m. on January 27, 2014. He was dressed in uniform and worked in a marked vehicle with number § 87(2)(b)*

**Memo Book**

On January 26, 2014, at 10:36 p.m., PO Leon received a radio run for a barricaded perpetrator at § 87(2)(b) § 87(2)(b). At 11:20 p.m., PO Leon marked the disposition § 87(2)(b). He could not explain offhand what that disposition meant (encl. 12c).

**CCRB Statement**

PO Leon was interviewed at the CCRB on July 21, 2014 (encl. 12e). His statement was consistent with PO Hartnett’s.

**Subject Officer: DET. ROGER SAVAGE**

- *Det. Savage, a white man, 5’8” tall, 245 pounds, with brown hair and green eyes, was § 87(2)(b) at the time of the incident.*
- *On January 26, 2014, Det. Savage was assigned to ESU truck 3 in the Bronx. He was partnered with Det. Hart and worked from 3:15 p.m. to 11:50 p.m. He was dressed in uniform.*

**Memo Book**

§ 87(2)(g), § 87(4-b)

**CCRB Statement**

Det. Savage was interviewed at the CCRB on August 27, 2014 (encl. 13d). His statement was

generally consistent with PO Hartnett's. Any additions or inconsistencies are noted below.

Det. Savage could not recall whether PO Hartnett had come downstairs with PO Leon, but was sure that PO Hartnett did not take the elevator to the § 87(2)(b) with him and Det. Hart.

**Subject Officer: DET. WILLIAM HART**

- *Det. Hart, a white man, 6'0" tall, 219 pounds, with brown hair and green eyes, was § 87(2)(b) at the time of the incident.*
- *On January 26, 2014, Det. Hart was assigned to ESU truck 3 in the Bronx. He was partnered with Det. Savage and worked from 3:15 p.m. to 11:50 p.m. He was dressed in uniform.*

**Memo Book**

§ 87(2)(g), § 87(4-b)

**CCRB Statement**

Det. Hart was interviewed at the CCRB on August 27, 2014 (encl. 14d). His statement was generally consistent with PO Hartnett's. Any additions or inconsistencies are noted below.

Det. Hart could not recall if PO Hartnett entered the building with him and Det. Savage. He took the elevator with Det. Savage.

**Witness Officer: SGT. VICTORIA SILCOTT**

- *Sgt. Silcott, a black woman, 6'0" tall, 170 pounds, with black hair and brown eyes, was § 87(2)(b) at the time of the incident.*
- *On January 26, 2014, Sgt. Silcott was a VIPER Supervisor in the § 87(2)(b). She worked from 3 p.m. to 11:23 p.m. and was dressed in plainclothes. She could not recall if she had a partner.*

**Memo Book**

Sgt. Silcott did not have any relevant memo book entries as she was assigned to a VIPER surveillance post (encl. 15b).

**CCRB Statement**

Sgt. Silcott was interviewed at the CCRB on July 14, 2014 (encl. 15d).

On the date of the incident, Sgt. Silcott worked at a VIPER post monitoring surveillance cameras inside § 87(2)(b). She recalled receiving a description of an individual, and that she saw a man who possibly fit a description exit an elevator on the 4<sup>th</sup> floor. She directed officers to search on the § 87(2)(b). The cameras are located only on the roof, in the lobby, and in the elevators. Sgt. Silcott did not witness any portion of the incident on the § 87(2)(b).

**NYPD Documents**

**Event #D14012622319 and associated recordings**

At approximately 9:29 p.m., § 87(2)(b) calls 911, reports that she had a fight with her child's father and that they each used a knife, and hangs up. A VIPER officer requests a callback because she could have the incident on video. The dispatcher reconnects with § 87(2)(b), who states that she and § 87(2)(b) cut each other. A PSA8 sergeant makes contact with § 87(2)(b) and says there is a blood trail in the hallway. The VIPER officer advises units to respond to the 4<sup>th</sup> floor, and PSA8 Sector A goes there and reports negative results. A PSA8 sergeant requests that PSA8 Sector B also respond, and they perform a vertical patrol. At approximately 10:32 p.m., a PSA8 sergeant requests ESU because there is a "possible AIDED in apartment who was stabbed in the neck, so we want to check." He also requests a canvass of surrounding hospitals. At

approximately 10:22 p.m., DI Kight requests an ambulance and says the “perp is outside of the apartment in custody.” The dispatcher requests an update from the PSA8 Conditions sergeant, who confirms that one person was stabbed but does not know the extent of the injury because he is still trying to find the AIDED. He says that no one is in custody. DI Kight then requests an ambulance again because the officers have an AIDED. At approximately 10:42 p.m., a PSA8 sergeant reports two under arrest. The PSA8 Conditions sergeant reports that the perpetrator or AIDED was found in apartment § 87(2)(b) with a laceration to the hand and that two people are under arrest (encl. 16a-16q).

### **Other Evidence**

§ 87(2)(b) provided eight photographs from inside his apartment, which show two mattresses that have been moved from their frames, a television lying face down on the ground, and two broken door locks (encl. 4c-4j).

### **Arrest for Incident and Disposition**

- As of November 13, 2014, a search of Office of Court Administration records show no entries regarding the arrest of § 87(2)(b) (encl. 21a-21c).

### **Status of Civil Proceedings**

- § 87(2)(b), § 87(2)(b), and § 87(2)(b) have not filed a Notice of Claim with the City of New York as of June 23, 2014, with regard to the incident (encl. 24).

### **Civilians Criminal History**

- § 87(2)(b) [REDACTED]  
[REDACTED]  
[REDACTED]
- As of November 13, 2014, Office of Court Administration records reveal no criminal convictions for § 87(2)(b) § 87(2)(b) (encl. 21d).
- § 87(2)(b) [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

### **Civilians CCRB History**

- This is the first CCRB complaint filed by § 87(2)(b) § 87(2)(b) and § 87(2)(b) (encl. 2a-2c).

### **Subject Officer(s) CCRB History**

- DI Kight has been a member of the service for 33 years and there are no substantiated CCRB allegations against her (encl. 1a).
- Det. Roger Savage has been a member of the service for 22 years and there are 3 substantiated allegations against him (encl. 1b-1c):
  - In case #9700739 the Board substantiated an allegation of search of person and recommended a command discipline.
  - In case #9800520, the Board substantiated allegations of threat of force and discourtesy and recommended charges.
- Det. William Hart has been a member of the service for 16 years and there are no

substantiated CCRB allegations against him (encl. 1d).

### **Conclusion**

#### **Allegations Not Pleaded**

§ 87(2)(b) alleged that an officer pointed a gun at him when he opened the apartment door. § 87(2)(b) alleged that officers caused property damage inside the apartment, including breaking open locked doors. As the investigation determined that officers made an emergency entry into the apartment, and as the pointing of guns and the opening of locked doors are standard and necessary elements of such an entry, those allegations were subsumed in the entry allegation.

§ 87(2)(b) § 87(2)(b) alleged that an officer briefly twisted the linkage of his handcuffs, causing pain in his wrists. § 87(2)(b) § 87(2)(b) told the officer to let go and the officer did so. As the alleged action is minor and § 87(2)(b) § 87(2)(b) did not sustain an injury, an allegation of force was not pleaded.

§ 87(2)(b) § 87(2)(b) alleged that ESU officers used tactical shields to push § 87(2)(b) into a corner in the hallway outside the apartment. As the investigation was unable to contact § 87(2)(b) and § 87(2)(b) § 87(2)(b) denied seeing any officer strike someone with a shield, the allegation was not pleaded.

§ 87(2)(b) § 87(2)(b) alleged that an officer said to § 87(2)(b) § 87(2)(b), “Shut the fuck up.” As § 87(2)(b) § 87(2)(b) did not make this allegation, an allegation of discourtesy was not pleaded.

§ 87(2)(b) § 87(2)(b) alleged that an officer said that ACS was going to get involved. As § 87(2)(b) § 87(2)(b) did not describe an officer specifically threatening to notify ACS, and § 87(2)(b) § 87(2)(b) did not describe any officers even mentioning ACS, such an allegation was not pleaded.

§ 87(2)(b) § 87(2)(b) alleged that, at some point during the incident, three officers said to him they were going to “arrest everybody.” § 87(2)(b) § 87(2)(b) s allegation is vague and he did not allege that officers made the statement to anyone other than himself. As § 87(2)(b) § 87(2)(b) Sr. did not corroborate the allegation, and § 87(2)(b) § 87(2)(b) was eventually arrested, § 87(2)(b) § 87(2)(b) s allegations of threats of arrest were not pleaded.

#### **Identification of Subject Officers**

DI Kight admitted to entering apartment § 87(2)(b) § 87(2)(b). As she was the supervisory officer on scene, the allegation of entry and search is pleaded against her. § 87(2)(b) § 87(2)(b) described the officer who said, “We don’t need no fucking warrant,” as a black female in a white uniform shirt. As DI Kight was the only officer present fitting this description, an allegation of discourtesy is pleaded against her.

§ 87(2)(b) § 87(2)(b) described the officer who said “Shut up or I’m taking you down to the precinct,” and “Shut up or we’re gonna arrest you,” as a Hispanic man in his late 20s or early 30s who was 6’0” tall, 200 pounds, with black hair. Both PO Cruz and PO Apolinario are Hispanic. However, § 87(2)(b) § 87(2)(b) further stated that the officer who made these statements was the same officer who roused him from his bed, escorted him out of the apartment, and twisted his handcuffs. PO Cruz and PO Apolinario both stated that they never entered the apartment and denied ever threatening to arrest § 87(2)(b) § 87(2)(b). The investigation concluded that the ESU officers entered the apartment and brought § 87(2)(b) § 87(2)(b) out. None of the three ESU officers was Hispanic. Moreover, it is unlikely that an ESU officer would remain with § 87(2)(b) § 87(2)(b) in the hallway and maintain custody of him, as ESU officers typically only perform an entry and sweep and leave the performance of further police action to precinct officers. The conflicting nature of the actions ascribed to the subject officer by § 87(2)(b) § 87(2)(b) resulted in the investigation being unable to positively identify the subject officer. As a result, the allegation of threat of arrest is pleaded against “an officer.”

## Investigative Findings and Recommendations

- **Allegation A—Abuse of Authority: DI Vanessa Kight entered and searched § 87(2)(b) in the Bronx.**

It is undisputed that § 87(2)(b) and § 87(2)(b) had a fight, that § 87(2)(b) was injured with a knife, that § 87(2)(b) reported to officers that she stabbed § 87(2)(b) in the neck, that a blood trail led to the doorway of apartment § 87(2)(b), and that the apartment's occupants failed to respond to officers' knocking for an extended period of time. It is further undisputed that § 87(2)(b) eventually voluntarily opened the apartment door, that officers pointed their guns at him, and that officers entered the apartment and brought out § 87(2)(b) and § 87(2)(b). § 87(2)(b) alleged that he returned home the next day to find door locks broken inside the apartment, along with mattresses and clothing that had been moved.

DI Kight stated that ESU officers entered first. She did not see what they did inside but assumed that they performed a cursory search. She entered after ESU officers exited and surveyed the scene, but did not search more invasively, did not search for evidence, and did not direct other officers to do so. She did not recall observing any property damage or broken locks inside. Conversely, PO Hartnett, Det. Savage, and Det. Hart all stated that § 87(2)(b) was already out of the apartment when they arrived, and they all denied ever entering the apartment or causing any property damage inside.

A warrantless entry into a private home can be made in an emergency situation. The following elements are used to determine whether an entry falls under the emergency exception to the warrant requirement: (1) The police must have reasonable grounds to believe that there is an emergency at hand and an immediate need for their assistance for the protection of life or property. (2) The search must not be primarily motivated by intent to arrest and seize evidence. (3) There must be some reasonable basis, approximating probable cause, to associate the emergency with the area or place to be searched. New York v. Musto, 966 N.Y.S.2d 263 (2013) (encl. 0a-0c). It is reasonable for officers, when making an emergency entry, to conduct a protective sweep of the premises to ascertain whether there are any injured or armed persons therein. People v. Robinson, 225 A.D.2d 398 (1996) (encl. 0k). An officer can draw his or her firearm and point it at another person so long as he or she has a reasonable fear for his or her own or another's personal safety. The determination as to whether an officer pointing a gun at someone constitutes misconduct must be made by assessing the reasonableness of the officer's actions in the totality of the surrounding circumstances. P.D. v. Gliner, OATH Index No. 955/00 (2000) (encl. 0z).

§ 87(2)(g)

[REDACTED]

§ 87(2)(g), § 87(2)(b)

- **Allegation B—Discourtesy: An officer spoke rudely to** § 87(2)(b)

§ 87(2)(b) alleged that, when he opened the apartment door, an officer said, “Get fucking down! Shut the fuck up!”

The use of profanity is generally not condoned by the Department and constitutes misconduct when used in a gratuitous disrespectful remark. However, it is not considered actionable misconduct when an officer uses an expletive in a verbal command to gain compliance during a chaotic and stressful situation. P.D. v. White, OATH Index 78667/03 (2004) (encl. 0h).

§ 87(2)(g), § 87(2)(b)

- **Allegation C—Discourtesy: DI Vanessa Kight spoke rudely to** § 87(2)(b)

§ 87(2)(b) § 87(2)(b) alleged that he protested that the officers did not have a warrant and DI Kight replied, “We don’t need no fucking warrant.” § 87(2)(b) did not recount hearing an officer make the remark.

DI Kight denied the allegation. Sgt. Demorin, PO Cruz, PO Apolinario, PO Hartnett, Det. Savage, and Det. Hart all denied hearing any officer make the alleged statement.

§ 87(2)(g), § 87(2)(b)

- **Allegation D—Abuse of Authority: An officer threatened to arrest** § 87(2)(b)

§ 87(2)(b) § 87(2)(b) alleged that an officer said to him, “Shut up or I’m taking you down to the precinct,” and “Shut up or we’re gonna arrest you.”

§ 87(2)(g)

- § 87(4-b), § 87(2)(g) § 87(4-b), § 87(2)(g)

§ 87(4-b), § 87(2)(g) § 87(4-b), § 87(2)(g)

§ 87(4-b), § 87(2)(g)

§ 87(4-b), § 87(2)(g), § 87(2)(b)

Team: 5

Investigator: \_\_\_\_\_ Daniel Giansante \_\_\_\_\_  
Signature Print Date

Supervisor: \_\_\_\_\_  
 Title/Signature                      Print                      Date

Reviewer: \_\_\_\_\_  
 Title/Signature                      Print                      Date

Reviewer: \_\_\_\_\_  
 Title/Signature                      Print                      Date